

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2003-000101-001 DT

06/17/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

SHAMROCK FOODS COMPANY  
Appellee/Plaintiff

MARK A KIRKORSKY

v.

BILLY BOBS PARK-N-PORK L L C (001)

PAUL D LEVIE

PHX JUSTICE CT-CENTRAL  
REMAND DESK-LCA-CCC

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This Court has considered and reviewed the record of the proceedings from the Central Phoenix Justice Court, and the Memoranda submitted by the parties. This Court has held this case to May 31, 2003 pending receipt of a reply by Appellants; However, no reply memorandum has been submitted and received by the Court. This case has been submitted to the Court for determination without oral argument.

This case arose when the Appellee/Plaintiff, Shamrock Foods Company, filed a complaint in the Central Phoenix Justice Court for breach of contract and unjust enrichment on an open account for which Appellants/Defendants allegedly failed to pay for goods and services. After contesting the means of service of process, Appellants filed their answer to Appellee's amended complaint. Thereafter, Appellee filed a Motion for Summary Judgment which was granted by the trial court on December 4, 2003. It is from that order granting the Motion for Summary Judgment which Appellants now appeal. The only issue presented in this appeal is whether the trial judge erred in granting Appellee's Motion for Summary Judgment.

The law in Arizona is well settled that summary judgment is appropriate when there are no genuine issues of material fact and one party is entitled to judgment as a matter of law.<sup>1</sup>

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<sup>1</sup> Fire Insurance Exchange v. Beray, 143 Ariz. 429, 694 P.2d 259, approved as modified, 143 Ariz. 361, 694 P.2d 191 (App. 1983).

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Motions for summary judgment are not designed to resolve factual issues. Where there is the slightest dispute as to the facts, a motion for summary judgment must be denied by the trial judge.<sup>2</sup> In reviewing a lower court's ruling on a motion for summary judgment, this Court must determine whether the trial court correctly applied applicable law to the facts of a given case.<sup>3</sup> The appellate court is not bound by the trial judge's legal conclusions, and must review those legal conclusions *de novo*.<sup>4</sup>

In this case, Appellants contest the factual findings of the trial court forming the basis for the trial judge's conclusions that no material facts were in dispute. However, Appellants offer unsupported allegations as justification for their conclusions that there is a difference and variance which constitute genuine issues of material fact. Such conclusions are not warranted in this case. This Court finds, as a matter of law, that the trial judge correctly applied substantive law to those facts which the Court found not to be at issue. This Court finds no error in the order of the trial judge granting Appellee's Motion for Summary Judgment.

IT IS THEREFORE ORDERED affirming the order of the Central Phoenix Justice Court granting Appellee's Motion for Summary Judgment, and the judgment entered.

IT IS FURTHER ORDERED remanding this matter back to the Central Phoenix Justice Court for all future and further proceedings in this case, with the exception of attorneys' fees and costs incurred no appeal.

IT IS FURTHER ORDERED that counsel for Appellee shall submit its Application for attorney's fees and costs incurred on appeal with an appropriate form of judgment consistent with this minute entry, including a provision for the awarding of attorney's fees and costs on appeal no later than July 16, 2003.

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<sup>2</sup> See, City of Phoenix v. Space Data Corporation, 111 Ariz. 528, 534 P.2d 428 (1975).

<sup>3</sup> Lingel v. Olbin, 198 Ariz. 249, 8P.3d 1163 (App. 2000).

<sup>4</sup> Id.